IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.82 OF 2001

Smt.Sheetal Raju Malhotra
Aged about 30 years, Adult,
Occupation, Private Tuition,
Indian Inhabitant, residing at
C/o. Govindram Sahitya, 9, C/7,
Nityanand Baug Society, Chembur
Mumbai 400 074. .. Appellant.

Versus

Raju Roopnaraian Malhotra
aged about 31 years, Adult,
Occupation Service,
Indian Inhabitant, residing at
R.C.Barrack No.40, Room No.479,
Chembur Colony, Chembur,
Mumbai 400 074. .. Respondent.

Mr.A.K.Saxena for the appellant.

Mr.Vijay Mishra for the respondent.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : JANUARY 13, 2005.

ORAL JUDGMENT (PER D.B.BHOSALE, J.)

1. This appeal under section 28 of Hindu Marriage Act, 1955 (for short "the Act") is directed against the judgment and order dated 16th June, 2001 rendered by the Principal Judge, Family Court, Bombay by which the application under section 13(1) (i-a) (i-b) of the Act filed by the

respondent-husband seeking dissolution of marriage has been allowed only on the ground of desertion and the marriage of the parties has been dissolved by decree of divorce.

2. The respondent had filed the petition for divorce on the ground of cruelty and desertion stating that the appellant-wife often used to quarrel with him and his family members since she wanted to stay separate from the members of the family. She also used to frequently visit her parents' home. A specific reference to the alleged incident dated 1st December, 1991 was made on which date, according to the respondent, 10 - 12 gundas came to his house, they abused and quarrelled with him and tried to forcibly took away the appellant with them to her parents' house. Since the respondent refused to send her with them, they assaulted him and his brothers - Mahesh and Vijay. The respondent informed the police, who arrived at the spot and took one Champa and her son Haresh to the police station. The respondent's brother - Vijay was sent for treatment to the hospital. From police station the parents of the appellant took her to their place and since then she never returned to her matrimonial home. It appears that

the complaint under section 498-A of Indian Penal Code was also lodged one month after the alleged incident dated 1.12.1991. That criminal case ultimately ended in acquittal. According to the respondent, the appellant wanted him to stay separately for which mentally he was not prepared, apart from the fact that financially it was not possible for him to have separate residence. The appellant resisted the petition for divorce by filing written statement stating that during her short stay at matrimonial home she was treated like a maid servant and was made to do household work like cooking, washing utensils and clothes of entire family etc. Occasionally, she was given stale food and there was also a demand of dowry and for fulfilment of the demand she was subjected to cruelty by the respondent and other family members.

3. The parties substantiated their case by entering the witness box themselves besides relying upon the pleadings and other material. They also examined 1-2 witnesses each in support of their case. The trial court on consideration of the entire material brought on record decreed the petition on the ground of desertion only, as provided under section 13(1) (i-b) of the Act,

holding that the appellant voluntarily withdrew herself from the company of the respondent for a continuous period of not less than two years immediately preceding the presentation of this petition, without just and valid reason and never made any efforts to return to the matrimonial house or for reconciliation. As a matter of fact the appellant, it is held, did not give positive response to the efforts made by the respondent for reconciliation.

4. We heard learned counsel for the parties for quite sometime, perused the impugned judgment, evidence of all the witnesses and other material placed before us. The sole contention urged by Mr.Saxena, learned counsel for the appellant-wife, was that the treatment with which the appellant was meted out at her matrimonial home, there was perhaps no option for her except to leave matrimonial home and that was sufficient reason for not returning to matrimonial home even when some efforts for reconciliation were made and, therefore, it cannot be said that she deserted the respondent. In other words, the respondent who treated the appellant with cruelty, which ultimately forced her to leave matrimonial house,

is not entitled to seek divorce on the ground of desertion. In support of his contention he placed reliance upon the judgment of Delhi High Court in **Harish Kumar Sahni V. Smt.Jyoti I (2002) DMC 185 and** of Madhya Pradesh High Court in **Ganga V. Satish Sitole I (2004) DMC 592.**

5. The only question that falls for our consideration is whether or not an intensity of the alleged treatment with which the appellant was meted out at her matrimonial home was sufficient enough to accept her claim that she was forced to withdraw from the company of the respondent and, therefore, decree sought by such husband on the ground of desertion cannot be granted. In other words, whether or not the cruelty allegedly meted out to the appellant was such, which forced her to leave matrimonial home and not to return despite there being efforts for reconciliation were made. In our opinion, if answer to the question is in the affirmative, the respondent-husband cannot be allowed to take advantage of his own wrongs and seek divorce on the ground of desertion as contemplated under section 13(1) (i-b) of the Act.

6. To appreciate the question raised in this

appeal, we perused the entire evidence and in particular testimony of the appellant and her sister - Rani Sahetia. At the outset, we found several contradictions, discrepancies and inconsistencies in their evidence which made us to evaluate and execute it with great care. Apart from the allegation that the appellant was treated like a maid servant by her husband and other family members, she has specifically stated in her examination in chief that in July, 1991 i.e. within less than two months of her marriage the respondent started demanding Rs.50,000/- and asked her to get that amount from her parents. She has further stated that when she asked her father to arrange the amount he expressed his inability since he had to get marry his another daughter. In August 1991, according to the appellant, the respondent asked the appellant to bring Rs.25,000/- from her sister for purchasing the two wheeler when the appellant had responded saying that if her father was not in a position to pay the amount as demanded by him, how could her sister arrange Rs.25,000/-, who had to bear household expenses. She has alleged that since the demand made by the respondent could not be fulfilled the respondent and his family members started ill treating and

harassing her. She was often kept without food and occasionally she was assaulted by the respondent. She was threatened that she would be assaulted with firewood as shown in Hindi movie "Sargam". She was made to work from 7 am to 12 midnight without any break. The specific allegation is made against the mother-in-law having said that if she did not fulfil the demand of money her pregnancy would be terminated by causing abortion and she would be removed from matrimonial home. Rani Sahetia - witness no.2, examined by the appellant, is her sister. Though in respect of certain allegations Rani Sahetia corroborates the version of the appellant which in our opinion were not of serious nature so as to constitute cruelty or sufficient enough to leave matrimonial home, in so far as demand of Rs.50,000/- is concerned she gives different story then what had been stated by the appellant. She has stated that when her brothers' wife went to matrimonial home of the appellant on the eve of Diwali her mother-in-law demanded cash of Rs.50,000/-. Even in respect of other allegations there is variance in the statements of the appellant and her sister - Rani. The general allegation of treating the appellant as maid servant and making her to work like a donkey was

not supported by any other evidence. Moreover, the veracity and credibility of the appellant and her sister was throughly shaken when she was confronted with the written statement. Her admissions in the cross examination, when she was confronted with the written statement, has made her oral testimony wholly unreliable and in view thereof it cannot be said that the treatment meted out to the appellant was sufficient enough to force her to withdraw from the company of the respondent. It would be advantageous to reproduce the relevant portion in the cross examination of the appellant. The relevant portion in paragraph 4 of the cross examination reads thus:

> . ..."I have filed my written statement and it is according to my instructions to the advocate. It is not mentioned in my written statement that in July - 91 the petitioner demanded Rs.50000/- from my parents. It is not mentioned in my written statement that in Aug.91 the petitioner told me to bring Rs.25000/- for purchasing a two wheeler from my sister. It is not mentioned in my written statement that the petitioner

threatened me that he will assault me with a wooden stick by worming in the fire as shown in a movie by name Sargam. It is not mentioned in my written statement that in Sept.91 the petitioner forcibly reached me at my parent's place without any of my clothes, and articles. It is not mentioned in my written statement that during Diwali the petitioner and his mother demanded sweets and other gifts and also cash Rs.500/-. It is not mentioned in my written statement that the Petitioner was demanding money and he told me that unless and until I bring money from my parents my ill treatment would continue".

6.1 In so far as the alleged incident of 1st December, 1991 is concerned, both the sisters have given different story. According to the appellant on 1.12.1991 the respondent, his mother and brother threatened her that they would assault her mercilessly and cause abortion and would remove her out of the matrimonial home. This was informed, according to the appellant, to a lady who acted as mediator for arranging their marriage, who in turn informed her parents. Thereafter, on 1.12.1991,

Champa, the parental Aunt of the appellant went to her matrimonial home to bring the appellant back when she was not allowed to go and instead she was locked in the room. Thereafter her parents informed the police who came to the matrimonial home and rescued the appellant. The complaint under section 498-A of Indian Penal Code in respect of the alleged incident of 1.12.1991 was lodged by her father on 31st December, 1991 with Tilak Nagar police station, Chembur. In so far as evidence of Rani Sahetia (witness No.2) is concerned, she gave altogether different version regarding the incident dated 1st December, 1991. According to her, the appellant gave message about the threats through her neighbours to her parents and, therefore, on 1.12.1991 her father had gone to the mediator who had arranged the marriage where the mother of the respondent had also come. There, according to Rani, mother of the respondent told her father to take her back and, therefore, on the very day in the evening her Aunty Pushpabai, Champabai and Kalabai went to the matrimonial home of the appellant for talk and to bring her back. The respondent, however, was not prepared to send her and thereafter there was scuffle in which brother of the respondent was assaulted by Pushpabai’s son.

Apart from the fact that the story given by the appellant and her sister is inconsistent, it is very pertinent to note that in the cross examination the appellant has admitted that she had not mentioned in the written statement that on 1.12.1991 the respondent and his family members had threatened her that they would beat her mercilessly and cause abortion and thereafter would remove her out of matrimonial home. She has further admitted that the written statement is silent in respect of her statement in examination in chief that she was locked in a room and they forcibly took her Mangalsutra and gold chain. It is very pertinent to note that the appellant did not bring independent evidence in support of the allegations made against the respondent and his family members and in particular the allegation in respect of the alleged incident dated 1.12.1991. We are at a loss to understand that as to why the appellant did not examine Pushpabai or Champabai or Kalabai, who allegedly went to matrimonial home of the appellant for talk and to bring her back when incident as narrated by her occurred. Either of them would have been the best witness to corroborate her version regarding the alleged incident of 1.12.1991. It was also possible for the appellant

to examine the concerned police officer from Chembur police station to whom her parents approached after she was locked in the matrimonial home and who rescued her. As a matter of fact in the alleged incident of 1st December, 1991 the brother of the respondent was assaulted and this fact has been admitted by the appellant in the cross examination. In view thereof the story narrated by the respondent in his evidence appears more probable then the one narrated by the appellant. Contradictions and discrepancies in the statement of the appellant and her sister-Rani has made their evidence unreliable and untrustworthy apart from the fact that it had been thoroughly shaken when the appellant was confronted with the written statement. Considering the inconsistencies, contradictions and discrepancies in the oral evidence laid by the appellant, as referred to above, it would be very difficult for us to accept that the appellant was subjected to cruelty and the intensity of the cruelty was such which forced her to withdraw from the company of the respondent. Except the allegations referred to above no other allegations of cruelty were made against the respondent. In our opinion, the evidence produced by the appellant is wholly

unreliable and the trial court has rightly discarded the same.

7. On the other hand the evidence laid by the appellant and the respondent show that the respondent-husband had made efforts to bring the appellant-wife back to matrimonial home which she refused and further the appellant never made any efforts to join her husband after the alleged incident of 1st December, 1991. Moreover, the admission given by the appellant that "If the petitioner is ready to pay me I am ready for divorce. I want the house to reside and sufficient maintenance for myself and my daughter" cannot be overlooked. Considering the time gap between the date of desertion and the oral evidence it is not possible to accept the submission that she gave such admissions out of frustration. Keeping this in view and considering the totality of the facts and circumstances of the case we find no reason to interfere with the judgment of the trial court which in our opinion is based on correct and proper appreciation of the evidence and material placed on record and is not liable to be set aside on the ground put forth by the appellant-wife. In the result, this appeal is devoid of any merits and is

dismissed as such leaving it to the parties to bear their own costs.

(D.B.Bhosale, J.) **(S.B.MHASE, J.)**

:hcs/sbm/

HIGH COURT AT BOMBAY
CIVIL APPELLATE SIDE

FAMILY COURT APPEAL NO.82 OF 2001

Date of Decision: January 13, 2005.

For approval and signature:

The Hon'ble Mr.Justice : S.B. MHASE

And

The Hon'ble Mr.Justice : D.B. BHOSALE

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?